

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,

Plaintiff,

v.

Case No. 2006 CA 2475
Civil Division - Judge Bateman

EMAIL DISCOUNT NETWORK,
ITAI KATHEIN and EYAL YEZCHEKELL,

Defendants.

SETTLEMENT AGREEMENT

Pursuant to Chapter 501, Part II, Florida Statutes, the STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL, ("the Attorney General") filed suit against Defendant EMAIL DISCOUNT NETWORK, LLC ("EDN"), ITAI KATHEIN and EYAL YEZCHEKELL in connection with charges placed on consumers' phone bills. This Settlement Agreement is intended to resolve the suit against Defendants, who enter into this Settlement Agreement without admission of liability.

STIPULATED FACTS

1. At its own website and other websites, EDN, a Florida company, offers (a) email accounts, (b) coupons and (c) cash back on purchases.
2. ITAI KATHEIN and EYAL YEZCHEKELL are corporate officers of EDN and direct its operations.
3. Upon becoming EDN customers, consumers are assigned email accounts, through which they are thereby provided with electronic newsletters offering coupons and cash back

when purchases are made from participating vendors, as well as access to the EDN website through which coupons and cash back offers are also available.

4. Prior to July 2006, text at the EDN website, and at other websites offering EDN services, stated:

- (a) that consumers who signed up would be charged on their phone bills,
- (b) that consumers had 72 hours after signing up to cancel their participation and, if they failed to do so, would be charged a non-refundable set-up fee of \$12.95 and, if they did not cancel within 30 days, a fee of \$14.95 a month, and
- (c) that the service was "risk free."

5. For customer identification, information security, fraud prevention and verification purposes, the consumer has provided EDN with personal information, including his/her first name, last name, postal address, email address, home telephone number, date of birth, gender and mother's maiden name, prior to applying for EDN services.

6. After the consumer submits his or her order for EDN services, EDN, within twenty-four (24) hours, emails the consumer a "confirmation" email followed by an "activation" email. No response to the "confirmation e-mail" is required from the consumers.

MATTERS INVESTIGATED

The Attorney General's Office investigated the following allegations:

7. Florida consumers told the Attorney General that they had not knowingly signed up for services offered by EDN and that their phone bills included unauthorized charges by EDN.

8. Other Florida consumers who were being charged by EDN told the Attorney General that they were not aware of the EDN charges on their bills and had not authorized these charges.

9. As of August 2006, of 20,516 Florida consumers charged by EDN, only 872 -- less than 5 percent -- had ever requested or used EDN's coupon or cash-back services.

10. According to EDN's records, about 40 percent of the Florida consumers charged by EDN requested refunds.

11. The Attorney General also investigated whether:

(a) Florida consumers did not realize that EDN had signed them up because disclosures on the EDN and related websites were not clear and conspicuous,

(b) The fact that EDN's services are not free was not clear and conspicuous,

(c) The fact that that Florida customers would be charged on their phone bills was not clear and conspicuous,

(d) EDN's disclosure of Florida consumers' right to cancel was not clear and conspicuous,

(e) Florida consumers incurred a financial risk sooner than 30 days after being signed up, and

(f) Line subscribers who were charged by EDN did not personally authorize the charges.

DEFINITIONS

12. "Clear and conspicuous" means that a statement is made in a manner readily noticeable and understandable to the persons to whom it is directed. To determine whether a statement is clear and conspicuous, factors to consider include whether:

(a) It is located sufficiently near any other statement that clarifies, modifies or explains it, or any other statement that it clarifies, modifies, or explains,

(b) It contradicts, or renders confusing or ambiguous, any other statement contained in the representation, and

(c) It is or appears to be inconsistent with any other statement contained in the representation.

13. "EDN Affiliate" is an online entity or website, which has a relationship with EDN and/or EDN's advertising agent, which Affiliate, for a commission or other consideration, will advertise the EDN service.

IT IS HEREBY AGREED BY THE PARTIES:

COMPLIANCE

14. EDN, its employees and any other persons who act on behalf of EDN, directly or indirectly, shall comply with the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2005).

15. EDN, whether acting directly or through its advertising agent(s), agrees to require in all contracts with Affiliates that said Affiliates are prohibited from making any changes to EDN's creatives, including any changes to EDN's disclosures. EDN shall monitor Affiliates to assure compliance and require any Affiliates to cure any violations within forty-eight (48) hours and shall maintain records of such violations by Affiliates for production to the Florida Attorney General upon request.

16. All terms and conditions related to EDN services on the Internet, and in any other promotional materials aimed at the public, shall be clear and conspicuous.

17. All disclosures related to the following shall be clear and conspicuous:

- (a) EDN may not represent that any services are free or "risk free" if they are not in fact free or "risk free;"
- (b) EDN services will be billed directly to the consumers' telephone bill,
- (c) Consumers will be charged unless they cancel within a certain period of time, stating that period of time,
- (d) If a non-refundable fee is to be charged, the amount of that fee and the fact that it will be non-refundable, and
- (e) Consumers will incur a monthly charge, stating the amount of that charge.

18. On the Internet, and in any other promotional materials, EDN shall clearly and conspicuously disclose all material terms of the offer, including those contained in paragraph 17 hereof in a location above the "Submit" button. The price component shall be made in a short stand alone sentence directly above the "submit" button and shall not be part of a lengthy paragraph. The parties agree that the following example of language related to the price component will satisfy this requirement: "I understand and agree that Email Discount Network will charge a monthly fee of \$14.95 to my local telephone bill unless I cancel my account within 72 hours."

It is understood that EDN has a reasonable time, not to exceed ten (10) business days from the date of execution of the consent judgment to institute the above mentioned changes to its creatives.

19. On the Internet, and in any other promotional materials, EDN shall not:

- (a) Request consumers' mothers' maiden names, or

(b) Represent that signing up for any of its services is "risk free" if Consumers must cancel their participation in order to avoid being charged or if Consumers will incur a non-refundable set-up fee.

20. EDN shall not charge any consumer unless EDN has clearly and conspicuously provided the disclosures as required by paragraph 17 and 18 hereof, and the consumer has clicked on the "Submit" button.

21. As set forth in paragraph 22, consumers who request refunds of amounts paid to EDN prior to the date of execution of the consent judgment, will be issued refunds of such amounts requested.

CONSUMER REFUNDS

22. EDN shall voluntarily make available a consumer refund for those consumers who believe that they are entitled to a refund of amounts paid to EDN prior to the execution of the consent judgment as follows:

(a) Within thirty (30) days of entry of the Consent Judgment, EDN shall send all Florida consumers who paid for services EDN offered on the Internet but did not retrieve coupons or receive cash back, and who have not received already full refunds, a letter with a subject line that shall read as follows: "Email Discount Network, LLC Settlement Benefit Notice."

(b) The letter referenced in subsection (a) above shall read as follows:

Dear Florida Consumer:

Our records reflect that you are or were an Email Discount Network, LLC ("EDN") customer and have been billed for EDN services through your phone bill. Pursuant to a court-approved voluntary settlement, you are entitled to a refund of amounts previously paid to EDN

for EDN services, for which you have not previously received a credit. If you believe you are entitled to such a refund, simply enter your full name, the telephone number billed by EDN and your current mailing address and the number of months of service for which you seek a refund, in the space provided below, and print and mail the completed form to EDN at: 1844 Nob Hill Road, #142, Plantation, FL 33322, Attention Consumer Refund Manager.

Full Name: _____

Telephone Number Billed: _____

Current Mailing Address: _____

Number of Months to be Refunded: _____

All refund request forms must be received within sixty (60) days of the date of this letter.

(c) In addition to the foregoing, EDN will make refunds available for consumers outside of the State of Florida. Within thirty (30) days of entry of the Consent Judgment, EDN shall send to any consumer outside the State of Florida who paid for services EDN offered on the internet but did not retrieve coupons or receive cash back, and who has not received already full refunds prior to the entry of judgment, an e-mail, with the same form as set forth in subsection (b) above, informing them of this refund offer and that they have sixty (60) days to send the refund request to EDN at the address listed in subsection (b) above. Refunds will be made to the satisfaction of the Florida Attorney General and consistent with those sent to Florida consumers.

(d) Within one hundred twenty (120) days of the entry of the Consent Judgment, EDN shall mail refund checks for amounts previously billed and not credited to all of

those eligible Florida consumers or out of state consumers from whom EDN has received refund request forms as described in subsection (b) and (c) above. EDN shall not be obligated to send checks to Florida or out of state consumers that have not submitted refund request forms, or in instances where the letter or email originally sent to the Florida or out of state consumer is returned as undeliverable.

(e) Within one hundred fifty (150) days of the entry of the Consent Judgment, EDN shall make a report to the Attorney General identifying the names, amounts, addresses and dates of refunds made to all Florida and out of state consumers that were sent checks pursuant to subsection (c) hereof.

(f) EDN shall report to the Florida Attorney General the names of Florida Consumers who returned refund forms to EDN who were not provided refunds.

MONITORING

23. For two (2) years after the date of execution of this Settlement Agreement, EDN shall compile and maintain records, to be made available upon request to the Attorney General, of (a) web pages at the EDN website and all other websites used by EDN and any of its Affiliates to offer services, (b) contact information for all persons signed up, including their telephone numbers, (c) usage of EDN services by persons signed up, (d) consumer complaints, (e) refunds to Florida consumers and (f) the gross amounts processed and billed monthly by EDN.

CONTRIBUTION

24. EDN shall pay the Attorney General the sum of Two Hundred Thousand Dollars (\$200,000.00) for attorney's fees and costs incurred in connection with this investigation, made payable to the Legal Affairs Revolving Trust Fund and sent to Allison Finn, Assistant Attorney

General, Office of the Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, Florida 32399-1050, pursuant to Section 501.2101, Florida Statutes.

FUTURE VIOLATIONS

25. Any future violations of this Settlement Agreement shall subject EDN to civil penalties and all sanctions provided by law. Pursuant to Section 501.207, Florida Statutes, a violation of this Settlement Agreement is *prima facie* evidence of a violation of the Florida Deceptive and Unfair Trade Practices Act, Section 501, Part II, Florida Statutes.

APPLICABILITY

26. This Settlement Agreement shall apply to and bind EDN's officers, directors, employees, agents, representatives, independent contractors, successors and assigns.

27. EDN shall be responsible for making the substantive terms and conditions of this Settlement Agreement known to its officers, directors, supervisors, employees, agents, representatives, successors and assigns.

FINAL CONSENT JUDGMENT

28. The parties agree that upon execution of the Settlement Agreement, the parties shall present this Court with an agreed-upon Final Consent Judgment and that this Settlement Agreement shall be attached to the Judgment and incorporated therein. The parties further agree that the Final Consent Judgment may be entered immediately by the Court without necessity of hearing.

29. Upon entry of the Final Consent Judgment, the Attorney General agrees to dismiss its above-titled lawsuit with prejudice.

30. This Settlement Agreement shall become effective upon its execution by all persons whose signatures appear below. The Deputy Attorney General may refuse to accept it at

his discretion. The receipt or deposit by the Attorney General of any monies pursuant to the Settlement Agreement does not constitute acceptance by the Department, and any monies received will be returned if the Settlement Agreement is not accepted.

IN WITNESS WHEREOF, Email Discount Network has caused this Agreement to be executed by Itai Katheir as President, a duly authorized representative of EDN, as a true act and deed, in Broward County, State of Florida, this 15th day of February 2007.

BY MY SIGNATURE I hereby affirm that I am acting in my capacity as President of Email Discount Network and that by my signature I am binding said corporation to this Agreement.

BY

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME, an officer duly authorized to take acknowledgments in the State of FLORIDA, personally appeared ITAI KATHEIR as PRESIDENT and duly authorized representative of Email Discount Network, and acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 15 day of Feb 2007.

Personally Known ☐ or
Produced Identification ☒
Type of Identification Produced FL DL

(print, type or stamp commissioned name of Notary)

Notary Public (signature)



Ira Jacobson
My Commission DD242812
Expires November 27 2007


[Signature]
ITAI KATHEIN

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME, an officer duty authorized to take acknowledgments in the State of FLORIDA,
personally appeared ITAI KATHEIN and acknowledged before me that he
executed the foregoing instrument for the purposes therein stated, on this 15 day of
FEB 2008

Personally Known or
Produced Identification ✓
Type of Identification Produced
FL A/c

(print, type or stamp commissioned name of Notary)

Notary Public (signature) *[Signature]*
 Ira Jacobson
My Commission DD242612
Expires November 27 2007


EYAL YEZCHEKELL

STATE OF New York
COUNTY OF Queens.

BEFORE ME, an officer duly authorized to take acknowledgments in the State of New York
personally appeared Eyal Yezchekell and acknowledged before me that he
executed the foregoing instrument for the purposes therein stated, on this 16th day of
February 2007.

Personally Known or
Produced Identification ✓
Type of Identification Produced

NJ Driver's License
(print, type or stamp commissioned name of Notary)

Notary Public (signature)



SOPHIA CELIS

NOTARY PUBLIC-STATE OF NEW YORK

No. 01-CE6106731

Qualified in Queens County

Commission Expires March 15, 2008

FOR THE OFFICE OF THE ATTORNEY GENERAL:

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